



Order 97-11-21
Served: November 12, 1997

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 12th day of November, 1997

Applications of

WINAIR, INC.

for certificates of public convenience and necessity under
49 U.S.C. 41102 to engage in interstate and foreign charter
air transportation of persons, property, and mail

**Dockets OST-97-2936
and OST-97-2937**

**ORDER TO SHOW CAUSE
PROPOSING ISSUANCE OF CERTIFICATE AUTHORITY**

Summary

By this order, we tentatively find that WINAIR, Inc., is fit, willing, and able to provide interstate and foreign charter air transportation of persons, property, and mail as a certificated air carrier.

Background

Section 41102 of Title 49 of the United States Code (Transportation) ("the statute") directs us to determine whether applicants for certificate authority to provide interstate and foreign charter air transportation are "fit, willing, and able" to perform such transportation, and to comply with the statute and the regulations of the Department. In making fitness findings, the Department uses a three-part test that reconciles the Airline Deregulation Act's liberal entry policy with Congress' concern for operational safety and consumer protection. The three areas of inquiry that must be addressed in order to determine a company's fitness are whether the applicant (1) will have the managerial skills and technical ability to conduct the proposed operations, (2) will have access to resources sufficient to commence operations without posing an undue risk to consumers, and (3) will comply with the statute and regulations imposed by Federal and State agencies. We must also find that the applicant is a U.S. citizen.

On September 25, 1997, WINAIR, Inc., filed applications in Dockets OST-97-2936 and OST-97-2937 for certificates to provide interstate and foreign charter air transportation of persons, property, and mail pursuant to section 41102. WINAIR accompanied its applications with the fitness information required by section 204.3 of our regulations.¹

No answers opposing WINAIR's applications were filed and no special issues regarding the applicant have come to our attention. Under these circumstances, we propose to decide the issue of the applicant's fitness on the basis of the written record, and we tentatively conclude that WINAIR is a U.S. citizen and is fit, willing, and able to operate its proposed interstate and foreign charter passenger service. However, we will give interested persons an opportunity to show cause why we should not adopt as final the tentative findings and conclusions stated herein.

The Company

WINAIR, a non-operating company based in Salt Lake City, was organized as a corporation under the laws of the State of Utah in August 1997. The company is wholly owned by Mr. Richard I. Winwood, a U.S. citizen, who serves as its Chairman of the Board.²

If its applications are approved, WINAIR intends to commence charter passenger operations in mid-size domestic markets, particularly in the western United States, as well as in Mexican and Canadian transborder markets, using two B737-200 aircraft, configured with 122-passenger seats. WINAIR plans to add two additional B737-200's to its fleet within its first year of operations.

Managerial Competence

WINAIR's Board of Directors consists of Mr. Winwood and two of its key personnel, Mr. Leon Christensen, its President and Chief Executive Officer, and Mr. Steven Kasteler, its Executive Vice President.

Mr. Leon Christensen, WINAIR's President and Chief Executive Officer, has more than 20 years of experience in the aviation industry, primarily in senior management roles with large air taxi and fixed-base operations (Interwest Aviation Corporation, Hudson General, and Keystone Aviation). He also has gained experience managing large aircraft operations while serving for approximately seven years as General Manager and Vice President of Key Airlines which, during his tenure, expanded from a small fleet of Convair aircraft to a fleet of twelve B-727 aircraft used to conduct charter operations. The applicant has stated that Mr. Christensen will not be a full-time employee. Rather, he will continue to serve as President and General Manager of Keystone Aviation, Salt Lake City's largest fixed base operator, and will devote only

¹ WINAIR filed information supplementing its applications on October 15 and 30, 1997.

² Mr. Winwood co-founded Franklin Convey, a motivational time-management company, in 1983. He sold most of his interests in the company in 1991 and since that time has been involved in Keystone International Institute, which engages in management consulting and training, Selective Cell Therapy, which develops biomedical research products, Magellan Technology, which engages in helicopter system design and manufacture, Intermountain Air, which acts as a Piper aircraft distributor, and Keystone Aviation, a fixed base operator located in Salt Lake City.

approximately 35 percent of his time to WINAIR and will be primarily responsible for its major business and management decisions. Only two employees, the Executive Vice President and the Director of Safety, will report directly to Mr. Christensen.

Mr. Steven Kasteler, WINAIR's Executive Vice President, will have the responsibility of overseeing and directing WINAIR's day-to-day operations. Mr. Kasteler has previously served in senior management positions with other charter air carriers, including Champion Air (Executive Vice President and General Manager, 1995-1997), Viscount Airlines (Executive Vice President, 1994-1995), Morris Air (Vice President of Airline Operations, 1989-1994), Ports of Call Air (Vice President of Sales and Marketing, 1987-1989) and Key Airlines (Vice President of Sales and Marketing, 1982-1987).

Mr. Usto E. Schulz, an Airline Transport Pilot with over 57 years of experience, serves as WINAIR's Vice President of Operations and Director of Operations.³ Mr. Schulz began his career in 1940 as an aircraft electrical instrument repairman in the U.S. Army, moving on to serving as a pilot before he left the military in 1947. At the start of his civilian aviation career, Mr. Schulz served as a pilot with several Alaska-based air taxi and certificated carriers for approximately seven years before joining the Federal Aviation Administration (FAA). Between 1957 and 1975, Mr. Schulz held senior management positions with the FAA, including serving for two years as Chief of the Air Carrier Branch and three years as Executive Officer of Flight Standards Service. Since leaving the FAA, Mr. Schulz has assisted various start-up companies in obtaining their certification and has served in various operational and technical positions at the Vice President level with several air carriers including Golden Gate Airlines, Weststates, Morris Air, Champion Air, and Air South, among others.

Mr. Terence W. Ash serves as WINAIR's Chief Financial Officer. Mr. Ash is a Certified Public Accountant who has over 23 years of experience in accounting and finance. He began his career in 1974 with Arthur Young & Co., and has since worked for a number of firms, including serving for four years as Vice President of Financial Operations at Morris Air, where he was responsible for overall cost control and operational efficiency during its period of rapid growth.

³ Since 1981, Mr. Schulz has served as President of Airline Management Services, Inc., a consulting company owned by him and his wife. While he will continue to hold his position with this company, he will not engage in any consulting work while he is employed by WINAIR and will devote all of his time to his duties with the applicant.

Mr. Troy J. Menken will serve as WINAIR's Vice President of Technical Services. As such, he will be responsible for directing the operation of WINAIR's technical engineering support, as well as for the administration of all maintenance contracts.⁴ Mr. Menken, an Airframe and Powerplant mechanic, has previously served as Director of Maintenance and Director of Technical Services at Morris Air (1992-1995), and as Vice President of Technical Services at Champion Air (1996-1997). In addition to these senior management positions, Mr. Menken has worked as an independent consultant performing internal airworthiness audits (1995-1996) and as a mechanic with America West and American Central Airlines (1983-1992).

WINAIR's Director of Maintenance is Mr. Troy Pithoud, an Airframe and Powerplant Mechanic with approximately 11 years of experience in the aviation technical field. Prior to joining WINAIR, Mr. Pithoud served briefly as Director of Maintenance with Dimension Aviation, a large aircraft repair and overhaul facility. In addition to his work with Dimension Aviation, Mr. Pithoud has held maintenance and technical positions with DynAir Tech, Morris Air, and Sabre Tech of Arizona. He is familiar with the maintenance requirements of several large aircraft types, including the B737 aircraft WINAIR intends to utilize.

Mr. Paul G. Proffett, an Airline Transport Pilot with over 11,000 total flight hours, serves as WINAIR's Chief Pilot. Mr. Proffett began his aviation career in 1974 as an air traffic controller. After seven years as a controller, he became a pilot and, since 1983, has worked as such with a variety of air taxi operators and certificated air carriers. His most recent experience has been with Air South where he began as a pilot in 1994 and became its Chief Pilot in March 1997. In addition to his work at Air South, Mr. Proffett has held Chief Pilot positions with F.S. Air Service (1989-1993), and with three air taxi operators (Troy Air of Anchorage, Southair Charters of Ft. Lauderdale, and Aviation Network of Anchorage).

WINAIR's Director of Quality Assurance and Chief Inspector is Mr. John T. Pithoud.⁵ Mr. Pithoud, an Airframe and Powerplant Mechanic, has almost 30 years of aviation maintenance experience, including serving in various senior technical positions.⁶ Most recently, he was Director of Quality Control for Champion Air. In addition, he has held similar quality control positions and/or Director of Maintenance positions with Morris Air, American Trans Air, Stateswest Airlines, and Weststates Airlines.

⁴ While Mr. Menken will be responsible for the administration of all maintenance contracts, oversight of these contracts will be performed by WINAIR's Quality Control Department.

⁵ Mr. Pithoud is the father of Troy Pithoud, WINAIR's Director of Maintenance.

⁶ As Director of Quality Control and Chief Inspector, Mr. Pithoud will be responsible for overseeing all maintenance contracts. WINAIR has stated that it intends to contract out most of its maintenance and that the vendors selected will be listed in its Operations Specifications as required. Further, WINAIR has stated that all heavy maintenance providers will also be audited by its Quality Control Department.

Mr. Jack S. Robins serves as WINAIR's Director of Safety. Mr. Robins began his aviation career in 1955 as a pilot in the United States Air Force. After leaving the military in 1959, he joined Frontier Airlines as a pilot, serving with that company until 1986, when he became an employee of Continental Airlines.⁷ He continued as a pilot with Continental until 1992 when he reached the mandatory pilot retirement age. In 1996, Mr. Robins joined Champion Air as its Director of Safety and served there until joining the applicant.

In view of the experience and background of the applicant's key personnel, we tentatively conclude that WINAIR has demonstrated that it has the management skills and technical ability to conduct its proposed service.⁸

Financial Plan and Operating Proposal

If granted the certificate authority it seeks, WINAIR intends to commence charter passenger operations in December 1997 in mid-size medium range domestic charter markets, as well as in Mexican and Canadian transborder markets using two 122-seat B737-200 aircraft. The company expects to add a third B737-200 aircraft to its fleet in its sixth month of operations and a fourth aircraft in its tenth month of operations. Its initial operations will consist of approximately 150-180 block hours per month for each aircraft and its operations are expected to increase to an average per month of 180-250 block hours per aircraft by the end of its first year of operations. WINAIR notes that it hopes to fill a void that has been created in the western United States by the cessation of operations by several charter air carriers.

WINAIR has provided detailed forecasts of its anticipated pre-operating expenses and its operating expenses for its first year of operations. These forecasts indicate that WINAIR anticipates that it will incur approximately \$2.0 million in start-up costs, and another \$5.1 million in operating expenses during three months of normal certificated operations. We have reviewed WINAIR's first year expense forecasts, on a unit basis, and find that they appear to be reasonable.

⁷ While with Frontier Airlines, Mr. Robins served as manager of its Pilot Training Department for seven years.

⁸ Before authorizing a carrier to conduct air transportation operations, the FAA also evaluates certain of the carrier's key personnel with respect to the minimum qualifications for those positions as prescribed in the Federal Aviation Regulations. The FAA's evaluation of these key personnel provides an added practical and in-person test of the skills and technical ability of these individuals.

Based on the information before us, WINAIR will need approximately \$7.1 million in funds to meet our financial fitness criteria.⁹ WINAIR's owner, Mr. Richard Winwood, has committed to providing the company with \$2.0 million in the form of equity and with a \$5.2 million line of credit. Third party verification that Mr. Winwood has available sufficient assets to fulfill this commitment was supplied by the Merrill Lynch Pacwest Center in Portland, Oregon.

In light of the company's funding plans, we tentatively conclude that WINAIR will have sufficient financial resources available to it to enable it to commence its proposed charter passenger operations without posing an undue risk to consumers or their funds.

Compliance Disposition

We also tentatively conclude that WINAIR has the proper regard for the laws and regulations governing its services to ensure that its aircraft and personnel conform to applicable safety standards and that acceptable consumer relations practices will be followed.

WINAIR has stated that, with one exception, there are no actions or outstanding judgments against it, its owners, or its key personnel, nor have there been any charges of unfair, deceptive or anti-competitive business practices, or of fraud, felony or antitrust violations brought against any of these parties in the past ten years. WINAIR further stated that there are no pending investigations, enforcement actions, or formal complaints filed by the Department against it, its key personnel, or persons having a substantial interest in it with respect to compliance with the statute or the Department's regulations.

According to the applicant, the only action against it, its owners, or its key personnel is a lawsuit in which three of its key employees, Messrs. Kasteler, Menken, and Schulz, are named. This lawsuit alleges that, while employed by Champion Air, Mr. Kasteler and others engaged in discriminatory practices in employment, deceived the plaintiff regarding his future with Champion, and interfered with the plaintiff's contractual relations and economic advantages. WINAIR states that this lawsuit is currently in the discovery phase and that its employees named in the lawsuit deny any wrongdoing and are vigorously contesting the charges made. Since this lawsuit is in an early stage and the allegations are being contested, we cannot conclude based on the information before us on the case that the WINAIR employees named lack a satisfactory compliance disposition. Further, our search of the Department's records found no compliance problems with WINAIR, its owners or key personnel. In addition, the FAA has advised us that the company has applied for certification under Part 121 of the Federal Aviation Regulations,

⁹ In evaluating an applicant's financial fitness, the Department generally asks that the company have available to it resources sufficient to cover all pre-operating costs plus a working capital reserve equal to the operating costs that would be incurred in three months of normal certificated operations. Because projected operations during one or more of the first three months of anticipated actual air transportation services frequently do not include all costs of operations that will be incurred during a normal period of operations, it is our practice to base our three-month standard on one quarter of the first year's operating cost forecast. In calculating available resources, projected revenues may not be used.

that the management presented thus far appear to be qualified for their positions with WINAIR, and that it knows of no reason why we should act unfavorably on the company's application.

CITIZENSHIP

Section 41102 requires that certificates to engage in air transportation be held only by citizens of the United States as defined in 49 U.S.C. 40102(a)(15). That section requires that the president and two-thirds of the Board of Directors and other managing officers be U.S. citizens and that at least 75 percent of the outstanding voting stock be owned by U.S. citizens. We have also interpreted the statute to mean that, as a factual matter, the carrier must actually be controlled by U.S. citizens.

As noted elsewhere in this order, WINAIR is wholly owned by Mr. Richard Winwood, a U.S. citizen and all of its officers are also U.S. citizens. Further, WINAIR has provided an affidavit attesting that it is a citizen of the United States within the meaning of the statute and that it is actually controlled by U.S. citizens. Finally, our review of the applicant's citizenship has uncovered no reason to suggest that control of WINAIR rests with non-U.S. citizens.

Based on the above, we tentatively conclude that WINAIR is a citizen of the United States and is fit, willing, and able to conduct the interstate and foreign charter passenger operations proposed in its applications.

PUBLIC CONVENIENCE AND NECESSITY

No finding of consistency with the public convenience and necessity is required for the award of authority for interstate charter air transportation under section 41102, although such a finding is required for authority to engage in foreign charter air transportation.

We tentatively find that the foreign charter air transportation proposed by WINAIR is consistent with the public convenience and necessity. By Order 78-7-106, which instituted the *Former Large Irregular Air Service Investigation*, the Civil Aeronautics Board found that there was a continuing demand and need for additional charter air carriers. These findings remain valid and apply to the authority sought by WINAIR. Therefore, if WINAIR meets the fitness requirements of the statute, it will receive certificates authorizing it to engage in interstate and foreign charter air transportation of persons, property, and mail under section 41102.¹⁰

¹⁰ Pursuant to 49 U.S.C. 41307, issuance of foreign authority to WINAIR is subject to Presidential review.

OBJECTIONS

We will give interested persons 7 calendar days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; answers to objections will be due within 5 calendar days thereafter. We expect such persons to direct their objections, if any, to the applications and points at issue and to support such objections with detailed economic analyses. If an oral evidentiary hearing or discovery procedures are requested, the objector should state in detail why such a hearing or discovery is considered necessary, and what material issues of decisional fact the objector would expect to establish through a hearing or discovery that cannot be established in written pleadings. The objector should consider whether discovery procedures alone would be sufficient to resolve material issues of decisional fact. If so, the type of procedure should be specified (*See* Part 302, Rules 19 and 20); if not, the reasons why not should be explained. We will not entertain general, vague, or unsupported objections. If no substantive objections are filed, we will issue an order that will make final our tentative findings and conclusions with respect to WINAIR's fitness and certification.

CERTIFICATE CONDITIONS & LIMITATIONS

If WINAIR is found fit and issued the certificates it seeks, its authority will not become effective until the company has fulfilled all requirements for effectiveness as set forth in the terms and conditions attached to its certificates. Among other things, this includes our receipt of evidence that WINAIR has been certified by the FAA to engage in the subject operations, a fully-executed OST Form 4520 evidencing liability insurance coverage that meets the requirements of Part 205 of our rules, and a revised list of pre-operating expenses already paid and those remaining to be paid, along with third-party verification that the company has available, either through deposits in its own name or a line-of-credit, sufficient funds to meet our financial fitness criteria.

Furthermore, we remind WINAIR of the requirements of 49 U.S.C. 41110(e). Specifically, that section requires that, once a carrier is found fit initially, it must remain fit in order to hold its authority. To be assured that certificated air carriers continue to be fit after effective authority has been issued to them, we require that they supply information describing any subsequent substantial changes they may undergo in areas affecting fitness.

Our tentative findings stated above are based on the operating plan described in WINAIR's application which utilizes a limited number of aircraft. These findings might no longer apply if the company were to substantially change the scope of its operations through the introduction of several additional aircraft. Therefore, once the applicant's certificate becomes effective, should WINAIR propose to acquire aircraft which would expand its entire fleet size to more than 8 aircraft, it must notify the Department in writing at least 45 days in advance and demonstrate its fitness for such operations prior to implementing service with those additional aircraft.¹¹

¹¹ WINAIR has already stated its intention to expand its fleet to eight aircraft during its second year of operations, should market conditions warrant. While the carrier's first year operating plans contemplate a maximum of four aircraft, its application and our fitness findings reflect sufficient resources to warrant our providing a reasonable level of potential expansion flexibility. Therefore, we will allow WINAIR to

Furthermore, should WINAIR propose other substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our rules.¹² The compliance of the company with this requirement is essential if we are to carry out our responsibilities under section 41110(e).¹³

REQUEST FOR CONFIDENTIAL TREATMENT

On October 15, 1997, WINAIR filed a motion for confidential treatment of the term sheet for the lease of its aircraft. In support of its request for confidential treatment of this document, WINAIR stated that it contained competitively sensitive pricing information reflecting the overall business arrangement between WINAIR and its lessor, the release of which could cause both parties substantial competitive harm.

Under Rule 39, the Department evaluates requests for confidential treatment in accordance with the standards of disclosure found in the Freedom of Information Act (FOIA) (5 U.S.C. section 552). Under Exemption 4 of FOIA, business information may be withheld from disclosure if it is "(1) commercial or financial, (2) obtained from a person outside the government, and (3) privileged or confidential."¹⁴

The information contained in the noted exhibit clearly meets the first two requirements. The only question, therefore, is whether the information is privileged or confidential--whether "disclosure of the information is likely to have either of the following effects: (1) to impair the government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained."¹⁵ Furthermore, to be privileged or confidential, the information must not be of the type that is usually released to the public.¹⁶

expand its fleet to a total of eight aircraft before it will be required to demonstrate its fitness to operate additional aircraft.

¹² The carrier may contact our Air Carrier Fitness Division to report proposed substantial changes in its operations, ownership, or management, and to determine what additional information, if any, will be required under section 204.5. If the carrier fails to file the information or if the information fails to demonstrate that the carrier will continue to be fit upon implementation of the substantial change, the Department may take such action as is appropriate, including enforcement action or steps to modify, suspend, or revoke the carrier's certificate authority.

¹³ We also remind WINAIR about the requirements of section 204.7 of our rules. This section provides, among other things, that (1) the certificate authority granted to a company shall be revoked if the company does not commence actual flying operations under that authority within one year of the date of the Department's determination of its fitness; (2) if the company commences operations for which it was found fit and subsequently ceases such operations, it may not resume certificated operations unless its fitness has been redetermined; and (3) if the company does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

¹⁴ *Gulf & Western Industries, Inc. v. U.S.*, 615 F.2d 527, 529 (D.C. Cir. 1979).

¹⁵ *National Parks and Conservation Association v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974).

¹⁶ *Gulf & Western Industries, Inc. v. U.S.*, *supra* at 530.

We agree with WINAIR that release of its aircraft term sheet could cause substantial harm to its competitive position through the release of proprietary financial information. Moreover, the document for which confidential treatment is being sought is the type of contractual document to which the Department typically grants confidential treatment. Therefore, we will grant WINAIR's request for confidential treatment of this document.

ACCORDINGLY,

1. We direct all interested persons to show cause why we should not issue orders making final the tentative findings and conclusions stated above and award certificates to WINAIR, Inc., authorizing it to engage in interstate and foreign charter air transportation of persons, property, and mail, subject to the attached specimen Terms, Conditions, and Limitations.
2. We direct any interested persons having objections to the issuance of orders making final any of the proposed findings, conclusions, or the certificate awards set forth here to file them with Department of Transportation Dockets, Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590, in Dockets OST-97-2936 and OST-97-2937, and serve them upon all persons listed in Attachment A no later than 7 calendar days after the service date of this order; answers to objections shall be filed no later than 5 calendar days thereafter.
3. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised by the objections before we take further action.¹⁷
4. In the event that no objections are filed, we will consider all further procedural steps to be waived and we will enter an order making final our tentative findings and conclusions.
5. We grant the request of WINAIR, Inc., to withhold from public disclosure its aircraft term sheet submitted pursuant to Rule 39 on October 15, 1997.
6. We will serve a copy of this order on the persons listed in Attachment A.

¹⁷ Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.

7. We will publish a summary of this order in the Federal Register.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at:
<http://dms.dot.gov/dotinfo/general/orders/aviation.html>.*

SPECIMEN



Terms, Conditions, and Limitations

WINAIR, INC.

is authorized to engage in interstate charter air transportation of persons, property, and mail between any point in any State, territory, or possession of the United States or the District of Columbia, and any other point in any of those entities.

This authority is subject to the following provisions:

(1) The authority to operate under this certificate will not become effective until six (business) days after the Department has received the following documents; provided, however, that the Department may stay the effectiveness of this authority at any time prior to that date:

(a) A copy of the holder's Air Carrier Certificate and Operations Specifications authorizing such operations from the Federal Aviation Administration (FAA).

(b) A certificate of insurance on OST Form 6410 evidencing liability insurance coverage meeting the requirements of 14 CFR 205.5(b) for all of its aircraft.

(c) A statement of any changes the holder has undergone in its ownership, key personnel, operating plans, financial posture, or compliance history, since the date of the Show Cause Order in this case.

(d) A revised list of pre-operating expenses already paid and those remaining to be paid, as well as independent verification that the holder has available to it funds sufficient to cover any remaining pre-operating expenses and to provide a working capital reserve equal to the operating costs that would be incurred in three months of operations.

(2) Pending receipt of effective authority, the holder may not accept payment of any kind (i.e., cash, check, or credit card), issue tickets for the operations proposed under this certificate, or enter into contracts with charter operators, and any advertisement by

the holder must prominently state: "This service is subject to receipt of government operating authority."

(3) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.

(4) The holder's authority is effective only to the extent that such operations are also authorized by the FAA.

(5) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).

(6) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this certificate.

(7) The holder is not authorized to engage in air transportation operations between points within the State of Alaska.

(8) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.

(9) In the event that the holder does not commence actual flying operations under this certificate within one year of the date of the Department's determination of its fitness, its authority shall be revoked for dormancy. Further, in the event that the holder commences operations for which it was found "fit, willing, and able" and subsequently ceases all such operations, its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.



SPECIMEN

Terms, Conditions, and Limitations

WINAIR, INC.

is authorized to engage in foreign charter air transportation of persons, property, and mail:

Between any place in the United States and any place outside thereof.

This authority is subject to the following provisions:

(1) The authority to operate under this certificate will not become effective until six (business) days after the Department has received the following documents; provided, however, that the Department may stay the effectiveness of this authority at any time prior to that date:

(a) A copy of the holder's Air Carrier Certificate and Operations Specifications authorizing such operations from the Federal Aviation Administration (FAA).

(b) A certificate of insurance on OST Form 6410 evidencing liability insurance coverage meeting the requirements of 14 CFR 205.5(b) for all of its aircraft.

(c) A statement of any changes the holder has undergone in its ownership, key personnel, operating plans, financial posture, or compliance history, since the date of the Show Cause Order in this case.

(d) A revised list of pre-operating expenses already paid and those remaining to be paid, as well as independent verification that the holder has available to it funds sufficient to cover any remaining pre-operating expenses and to provide a working capital reserve equal to the operating costs that would be incurred in three months of operations.

(2) Pending receipt of effective authority, the holder may not accept payment of any kind (i.e., cash, check, or credit card), issue tickets for the operations proposed under this certificate, or enter into contracts with charter operators, and any advertisement by

the holder must prominently state: "This service is subject to receipt of government operating authority."

(3) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.

(4) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate is subject to compliance with such treaties and agreements and with any orders of the Department of Transportation issued under them or for the purpose of requiring compliance with them.

(5) The exercise of the authority granted here is subject to the holder's first obtaining from the appropriate foreign governments such operating rights as may be necessary.

(6) The holder's authority is effective only to the extent that such operations are also authorized by the FAA.

(7) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).

(8) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this certificate.

(9) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.

(10) In the event that the holder does not commence actual flying operations under this certificate within one year of the date of the Department's determination of its fitness, its authority shall be revoked for dormancy. Further, in the event that the holder commences operations for which it was found "fit, willing, and able" and subsequently ceases all such operations, its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department.

Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

SERVICE LIST FOR WINAIR, INC.

Attachment A

EILEEN M GLEIMER
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